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ABSTRACT

The office of Ombudsman at San Jose State College was created as a response to a series of demonstrations by the black community protesting discrimination experienced on and around campus. The Ombudsman was to "search out and facilitate the removal of discrimination of the basis of race, creed, or national origin" wherever it occurred. From preoccupation with ethnic problems, the scope of the office was expanded with a year to deal with a whole range of problems for the entire campus community. His primary sources of power were to be inquiry, negotiation, and persuasion, and in the event of impasse, he could call on the President for executive action. The experience of the first year indicates that the Ombudsman can: (1) restore a sense of accessibility to the students; (2) furnish alternative channels to the confrontations taking place on campus; (3) help form administrative decisions; (4) offer a hearing to the student who believes he is not being heard; (5) reassure students that their concerns are not being ignored; (6) gain the confidence of the students; (7) help bring about more equality for all; (8) help to counteract administrative tendencies to preserve the status quo; and (9) help to teach the University community to listen to grievances and attempt to remedy them. In order to be effective, the Ombudsman needs the students' trust. (AF)

(A Report by J. Benton White, Ombudsman, San Jose State College)

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"THE OMBUDSMAN IN PRACTICE"

On a rainy spring morning a Black student was walking down the hall of a classroom building at San Jose State College. According to his account of the story a faculty member, a department head, came up behind him, knocked off his hat and said, "We don't wear our hat in here." The student was infuriated, feeling he had been insulted. The entire Black community on our campus felt that there were racial overtones in the incident.

An hour after the incident the Ombudsman was notified. He was asked to attend a meeting with the student, the Academic Vice President and the Dean of the School. The student filed an official complaint about the incident. The college complaint was directed to a committee of the Academic Council. The student also wanted to file a complaint with the civil authorities over the incident. He asked the Ombudsman's counsel.

After having determined that there was some substance to the student's story the Ombudsman inquired of the District Attorney on behalf of the student to determine if he had grounds to file a charge of battery. The District Attorney indicated that what was described was a simple battery. The Ombudsman arranged an appointment between the District Attorney and the student. The student returned later to report the District Attorney agreed that there was indeed a battery but that he (the District Attorney) would not charge the faculty member as he was certain he could not get a conviction. The student felt that the District Attorney had no right to not allow him to file a charge, even if there were no conviction. The Ombudsman contacted the City Human Relations Commission to determine if the District Attorney had indeed assumed some of the perrogatives of the student. After consulting their attorney the City Human Relations Commission determined that the District Attorney had not exceeded his authority but the student could file a civil suit for damages. We supplied a list of attorneys who would work for cost.

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The Ombudsman in the meantime had continued to discuss the case with both the student and faculty member involved. The faculty member defended his actions on the basis he had accosted students in his department this way for years to "teach them courtesy." He acknowledged his actions were wrong and the policy no longer appropriate. He agreed to offer a public apology as well as make an official change in department policy so that the incident would not recur. The investigation did not uncover racial overtones in the incident. The student indicated that if all details of the incident would be publicized he would accept these conditions as a resolution of the problem.

This incident was only one of many the Ombudsman at San Jose State College dealt with during the past school year. The office was created on our campus as a response to a series of demonstrations by our Black community in protest to discrimination experienced on and around our campus by their community. A series of hearings held during the week of the demonstrations determined there was much substance to their charges and in creating the office our President, Robert D. Clark, said the Ombudsman was to "search out and facilitate the removal of discrimination on the basis of race, creed, or national origin in whatever areas of the College or the College community it may occur." Our office choose the Danish Ombudsman as its model and followed the guidelines of that model to direct its operation. Although the major work of the office was with the problems of our ethnic minorities it soon became apparent the job could not limit itself to that area. Its very presence brought many others with unresolved problems for which they simply had no place else to go. The frustrations of what many considered unjust treatment of legitimate complaints were increasingly directed to the Ombudsman by students on their own initiative or by others in the College who simply didn't know what else to do with them. By the end of the year it was determined that that office would be officially expanded in scope to deal with a whole range of problems, both curricular and co-curricular for the entire campus community.

The scope and limitations of the Ombudsman were outlined in his job description.

1. The Ombudsman's primary sources of power shall be inquiry, negotiation and persuasion.

2. In the event of impasse, the Ombudsman shall call upon the President for executive action.

The Ombudsman had no authority to change decisions on his own, only to recommend. In functioning, he sought to determine the facts of the case. If he determined in his investigation that an injustice had been done, he was free to recommend a remedy. In all of our cases this past year these recommendations were accepted, but this certainly will not always be the case. The Ombudsman is not a god and he will not always be correct or totally objective.

His job, on our campus, has been to determine the facts and try to assure justice for the individual. As in the case of his Scandanavian predecessor, he does not have to wait until a complaint is brought to act. He has the freedom to investigate on his own initiative. This became an important function for the Ombudsman at San Jose State. By the very nature of the events which created the office there was much to be looked into on our campus.

The Ombudsman, for instance, sought to determine if the current policies and practices of the service areas on the campus, such things as housing, placement, etc. were in any way not protecting all the persons they served. It was determined that among other things the Placement Center had not updated its non-discrimination policies in several years. The Ombudsman worked very closely with this office in updating these policies, a move which won the instant approval of the minority communities. Policies concerning advertising in on-campus publications as well as more aggressive enforcement of adequate housing policies were brought about by these same investigations.

The Ombudsman functioned as well to bring relief to person who were victims of rules applied under the letter of the law but nevertheless might unjustly punish someone because of their particular circumstances. In these cases his office could

consider the particular circumstanes and if the conditions warrant he was free to recommend a remedy for reconsideration. A case in point concerned a student who had transferred to our college. In his previous school he had taken a psychology course he thought would satisfy the general education requirements. However, it was not approved as such at our college. The catalog of both his previous college and our own catalog indicated that the course he was made to take at our college were not the same. He had been through the appeal procedure set up for such cases and they had ruled against his request. It was in the discretion of the Department Chairman to allow the substitution but he had not choosen to do so. In his investigation the Ombudsman had discovered extenuating circumstances which had not been considered in the original appeal procedure. He brought these to the attention of the Department Chairman who thought they were sufficient to make an exception to the rules and grant him credit for the original course. In this case no rules had been misapplied but the student still suffered. He achieved some relief through the Ombudsman.

In the limited time available one can only skim the implications of this new office in higher education. We have, out of our experience of this office in its first year, made some tentative conclusions we feel have validity as a basis for continuing the Ombudsman at San Jose State College. They are:

1. The Ombudsman can restore a sense of accessibility to the student.

2. The Ombudsman can furnish alternative channels to the confrontations taking place on our campus. (Not for all confrontations, but at least for a portion.)

3. The Ombudsman can help form Administrative decisions.

4. The Ombudsman can offer a place for the student who feels he is not being heard to go.

5. The Ombudsman can give some hope that real concerns would not be lost in the shuffle of events, and the student could well feel his concerns were better handled through such a process.

6. The Ombudsman could have the confidence of the student that he is not there to defend the "status-quo".

7. The Ombudsman can, in handling individual complaints, help bring about equality for all in the college community.

8. The Ombudsman can help overcome the tendency on the part of Administration to deal with complaints by tending to re-inforce current procedures and condone employee action rather than meeting the problems causing the grievances.

9. The university community itself must learn to listen to grievances and attempt to remedy them. The Ombudsman can help in this process.

There is one caution I must add out of our experience. The office of Ombudsman will only be effective when it is trusted by those who it was created to serve and they are willing to use it. At San Jose State we found that our Black community was willing to trust and use the office a great deal more than our Mexican-American community. The Ombudsman was able to function for them much more effectively as a result. It is a fact of life that the office will not enjoy the equal trust of all for many reasons, so no matter how good the idea, the intentions, or the personnel, there must also be trust from the people it serves for it to serve at all.

The Ombudsman is no substitute for academic reform, for better administration, or for constant re-evaluation, but it does compliment these important functions of a growing institution. As Stanley Anderson has observed, "Among the Ombudsman's worse enemies are his best friends: those who expect too much of him." But, if one can accept the limitations of the office, the job of protecting individual human rights, as an important and proper function of an office in higher education, then the office can and does function effectively.

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Ombudsman - San Jose State College